



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA-HQ-SFUND-2014-0474; FRL-9917-28-OSWER]

Amendment to Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the standards and practices for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to remove the reference to ASTM International's E1527-05 standard practice. This 2005 standard practice was replaced with an updated standard, the E1527-13, by ASTM International, a widely recognized standards development organization. Specifically, EPA is amending the "All Appropriate Inquiries Rule" to remove the reference to ASTM International's E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

DATES: The effective date for this action is October 6, 2015.

ADDRESSES: Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the **HQ EPA Docket Center**, EPA/DC, EPA WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room at this docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Superfund Docket is (202) 566-9744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the CERCLA Call Center at 800-424-9346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, call 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, 202-566-2774, overmeyer.patricia@epa.gov.

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I. Regulated Entities

The EPA is removing the reference to the 2005 ASTM standard in the All Appropriate Inquiries Rule at 40 CFR part 312 (70 FR 66070, as amended). In November 2013, ASTM International replaced its 2005 standard (ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process”) with an updated standard, ASTM E1527-13 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” The updated 2013 standard is a currently recognized industry consensus-based standard to conduct all appropriate inquiries as provided under CERCLA. In December 2013, EPA published a final rule indicating that parties who acquire potentially contaminated properties and brownfields grantees using EPA brownfield grant funding to conduct site characterizations and

assessments may use the ASTM E1527-13 standard practice when conducting all appropriate inquiries pursuant to CERCLA (78 FR 79319). Today's rule does not include any changes to the standards and practices included in the All Appropriate Inquiries Rule (AAI Rule). Any party who wants to meet the provisions under CERCLA to conduct all appropriate inquiries may follow the standards and procedures set forth in the AAI Rule at 40 CFR part 312 or use the new ASTM E1527-13 standard, as provided in the AAI Rule.

Persons potentially affected by this action are those who perform all appropriate inquiries, including public and private entities who intend to claim protection from CERCLA liability as bona fide prospective purchasers, contiguous property owners, or innocent landowners. In addition, any person conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) may be affected by today's action. This includes state, local and tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry Category	NAICS Code
Real Estate	531
Insurance	52412
Banking/ Real Estate Credit	52292
Environmental Consulting Services	54162
State, Local and Tribal Government	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected persons in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action.

II. Statutory Authority

Today’s action, which amends the AAI Rule at 40 CFR part 312 setting Federal standards for the conduct of “all appropriate inquiries,” is authorized under section 101(35)(B) of CERCLA (42 U.S.C. 9601), as amended by the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

III. Background

On January 11, 2002, President Bush signed the Small Business

Liability Relief and Brownfields Revitalization Act, Public Law 107-118 (“the Brownfields Amendments”), which amended CERCLA. In general, the Brownfields Amendments provide funds to assess and clean up brownfields sites; clarify CERCLA liability provisions related to certain purchasers of contaminated properties; and provide funding to enhance state and tribal cleanup programs. Subtitle B of the Brownfields Amendments added new limitations on CERCLA liability under section 107 for bona fide prospective purchasers and contiguous property owners and clarified the requirements necessary to establish the innocent landowner defense under CERCLA. The Brownfields Amendments also revised section 101(35) of CERCLA to provide that parties acquiring contaminated or potentially contaminated property must undertake “all appropriate inquiries” into prior ownership and use of the property prior to acquisition to qualify for protection from CERCLA liability.

The Brownfields Amendments further directed EPA to develop regulations establishing standards and practices for conducting all appropriate inquiries. On November 1, 2005, EPA promulgated regulations that established standards and practices for all appropriate inquiries (70 FR 66070). In the AAI Rule, EPA referenced the existing ASTM E1527-05 “Standard Practice for Environmental Site Assessments: Phase I

Environmental Site Assessment Process” and authorized its use to comply with the rule. On December 23, 2008, EPA revised the AAI Rule to recognize another ASTM International standard as compliant with the standards and practices set forth in the AAI Rule, ASTM E2247-08 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property” (73 FR 78716).

In November 2013, ASTM International published ASTM E1527-13, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.” In early 2013, at ASTM International’s request, EPA reviewed this standard and determined that a person’s use of the standard would be compliant with the AAI Rule.

On December 30, 2013, EPA published a final rule which provided that persons conducting all appropriate inquiries may use the procedures included in ASTM E1527-13 to comply with the AAI Rule (78 FR 79319). On June 17, 2014, EPA published a proposed rule (79 FR 34480) proposing to amend the AAI Rule to remove the reference to ASTM E1527-05 Phase I Environmental Site Assessment Standard.

IV. Summary of Comments and EPA Responses

In response to the June 17, 2014 proposed rule (79 FR 34480), EPA

received five comments. Four of the comments were supportive of the proposed rule. The sole negative comment asserted that the principal difference between the E1527-05 standard and the E1527-13 standard is the inclusion of a requirement to evaluate the potential presence of vapor releases under the E1527-13 standard. The commenter further stated that because vapor releases are not by themselves a CERCLA concern, EPA should continue to allow for the use of the E1527-05 standard. EPA disagrees with this comment. The scope of the AAI Rule and the ASTM E1527-05 standard always included the requirement to identify all indications of releases and threatened releases of hazardous substances, or “recognized environmental conditions (RECs),” including indications of vapor migration or vapor releases. With the updates included in the 2013 version of the ASTM E1527 standard, ASTM modified the definition of migration to specifically include vapor migration and remove any confusion regarding the need to identify all RECs, or all indications of releases or threatened releases of hazardous substances, when conducting an AAI investigation.

Two of the commenters who supported EPA’s proposed rule recommended in their comments that EPA delay the effective date of the final rule until six months after the publication date, rather than the one year

delay proposed by EPA. Although EPA agrees with the commenters' statements that most environmental professionals are likely already using the updated E1527-13 standard, the Agency believes it is prudent to provide for the one year delay in the effective date. The AAI Rule requires that AAI investigations be conducted within one year prior to the date of acquisition of the subject property (see 40 CFR 312.20(a)). In addition, the AAI Rule requires that certain aspects of the AAI investigation be conducted or updated within 180 days prior to the date of acquisition of the subject property (40 CFR 312.20(b)). Given these requirements, EPA determined that delaying the effective date for the final rule by only six months may be burdensome for some parties. Therefore, the effective date for this final rule, which removes the reference to the ASTM E1527-05 standard, will be October 6, 2015 allowing sufficient time for AAI investigations initiated or on-going at the time of publication of today's rule to be completed or updated prior to the effective date.

V. Overview of Today's Action

EPA is amending the AAI Rule at 40 CFR 312 to remove the reference to ASTM International's E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." In November 2013, ASTM International designated this standard a

“historical standard” and replaced it with the updated ASTM E1527-13

“Standard Practice for Environmental Site Assessments: Phase I

Environmental Site Assessment Process.”

Today’s action does not prevent parties from continuing to use other standards, methods, or customary business practices for conducting all appropriate inquiries, so long as they comply with the standards and practices set forth in the AAI Rule. Instead, today’s proposed action removes the reference to a standard that ASTM International no longer recognizes as current since it no longer represents the most recent consensus-based standard.

EPA is taking this action because the Agency wants to reduce any confusion associated with the regulatory reference to a historical standard that is no longer recognized by its originating organization as meeting its standards for good customary business practice. In addition, we believe that today’s final rule will promote the use of the 2013 standard currently recognized by ASTM International as the consensus-based, good customary business standard.

Today’s action includes no further changes to the AAI Rule other than to remove the reference to the historical ASTM E1527-05 standard. It does not impact the reference to the recently revised ASTM standard, E1527-13

in the AAI Rule. It also does not impact parties who acquired properties between November 1, 2005 and the effective date of this final rule and used the 2005 ASTM standard (ASTM E1527-05) to comply with the AAI Rule, as it was in effect at the time the property was acquired.

VI. Effective Date of Final Action

Today's action is a final rule. The EPA anticipates that some parties, at this time may still be using the historical standard (ASTM E1527-05) to comply with the provisions of the AAI Rule. Therefore, the Agency is delaying the effective date of today's final action for one year to provide parties with an adequate opportunity to complete AAI investigations that may be ongoing and to become familiar with the updated industry standard (ASTM E1527-13). The effective date of today's final rule, which will remove the reference to ASTM E1527-05 in the AAI rule, is October 6, 2015.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action will not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). The current regulation does not have an information collection burden and today's action's only change to the regulation is to delete the reference to a historical standard that recently was replaced with an updated version of the standard. A final rule referencing the updated version of the standard was published by EPA on December 30, 2013 (78 FR 79319).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions.

Today's action does not change the current regulatory status quo and does not impose any regulatory requirements. After considering the economic impacts of today's final rule on small entities, I certify that this

action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely removes a reference to a historical voluntary consensus standard. The final rule imposes no new regulatory requirements and will result in no additional burden to any entity. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

As stated above, this final rule also is not subject to the requirements of section 203 of UMRA because it contains no new regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. Today's final rule will not substantially change the current regulation; it merely removes a reference to a historical voluntary consensus standard. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and

responsibilities among the various levels of government, as specified in EO 13132. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). This action merely removes a reference to a historical voluntary consensus standard. Today's final rule does not change any current regulatory requirements and therefore will not impose any impacts upon tribal entities. Thus, EO 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations

**That Significantly Affect Energy Supply, Distribution, or
Use**

Today's final rule is not subject to EO 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under EO 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action involves technical standards. Therefore, the requirements of section 12(d) of the NTTAA (15 U.S.C. 272) apply. The NTTAA was signed into law on March 7, 1996 and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together

federal agencies as well as state and local governments to achieve greater reliance on voluntary standards and decreased dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: a) eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulation; b) provide incentives and opportunities to establish standards that serve national needs; c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and d) further the policy of reliance upon the private sector to supply Government needs for goods and services. The Act requires that federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), wherever possible in lieu of creating proprietary, non-consensus standards.

Today's final rule complies with the NTTAA as it allows persons conducting all appropriate inquiries to use the procedures included in the updated ASTM International standard known as Standard E1527-13 and entitled "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" to comply with the AAI Rule. The rule also deletes reference to a standard that is no longer recognized as

current by the standards developing organization responsible for its development.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. Today's action merely removes a reference to a historical voluntary consensus standard and does not impose any new requirements.

K. Congressional Review Act

The Congressional Review Act, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule is effective on October 6, 2015.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure,
Hazardous substances.

Dated: September 19, 2014.

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

**PART 312 – INNOCENT LANDOWNERS, STANDARDS FOR
CONDUCTING ALL APPROPRIATE INQUIRIES**

1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart B—Definitions and References

§ 312.11 [Amended]

2. Section 312.11 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

[FR Doc. 2014-23399 Filed 10/03/2014 at 8:45 am; Publication Date:
10/06/2014]